**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 572 OF 2001**

Shavarappa Gundappa Birajdar
& Ors. ..Appellants
versus

State of Maharashtra ..Respondents

Mr. P. P. Hudlikar with Mr. V. V. Purwant for the Appellants.

Mrs. P. H. Kantharia, APP for the State.

**WITH**
**CRIMINAL APPEAL NO. 496 OF 2001**

Sidharam Panchappa Patil ..Appellant
versus
State of Maharashtra ..Respondents

Mr. P. R. Arjunwadkar for the Appellant.
Mrs. P. H. Kantharia, APP for the State.

**WITH**
**CRIMINAL APPEAL NO. 549 OF 2001**

Yellappa Somanna Pujari & Ors. ..Appellants
versus
State of Maharashtra ..Respondents

Mr. P. R. Arjunwadkar for the Appellants.
Mrs. M. M. Deshmukh, APP for the State.

**WITH**
**CRIMINAL APPEAL NO. 590 OF 2001**

Basawant Nagendra Patil ..Appellant
versus
State of Maharashtra ..Respondents

Mr. S. C. Halli for the Appellant.
Mrs. M. M. Deshmukh, APP for the State.

**WITH**
**CRIMINAL APPEAL NO. 634 OF 2001**

Jagu Basanna Birajdar ..Appellant
versus
State of Maharashtra ..Respondents

Mr. U. Agandsurve for the Appellant.
Mrs. G. P. Mulekar, APP for the State.

**WITH**
**CRIMINAL APPEAL NO. 102 OF 2002**

Irappa Kamanna Dodmani ..Appellant
versus
State of Maharashtra ..Respondents

Mr. B. G. Tangsali for the Appellant.
Mrs. P. H. Kantharia, APP for the State.

**CORAM : D. G. DESHPANDE, &**
**Smt. R. S. DALVI, JJ.**

**DATE : 14TH DECEMBER, 2006**

**ORAL ORDER :**

1. Heard Advocate for the Appellants - Accused and learned APPs for the State, today.

2. Earlier, also we have heard the Advocates for the Appellants, at length. It transpired during

the arguments that certain important facts were not forming part of the order dated 27.6.2001, viz. whether on the date of the incident the school which was just adjacent to the spot was open and running, and the students, teachers and staff were there or not. Secondly, we did not find that the medical case-papers of the victim were on record. We asked the learned APPs at that time to get hold of those papers. They were produced before us, yesterday.

3. Looking to the nature of those papers, it is clear that in any case some vital piece of evidence was not forthcoming before the trial court. It may help both the sides either way and therefore in this view of the matter, by consent, this case has become the case for remand to the trial court for recording evidence on those two important aspects and other incidental matters relating thereto.

4. Therefore, by consent, looking to the gravity of the situation and the fact that 14 persons are involved in the case of a murder of one single individual, the impugned order of conviction dated 27.6.2001 is set aside. Matter is remanded back to the trial court for recording fresh evidence

mainly on two points, viz. whether the school was running at that time and other incidental matters related to this issue, and, secondly, regarding evidence about the medical case papers of the victim, copies of which are now tendered before us by the learned APP. Original of those papers will be produced before the trial court with full opportunity to the defence to cross examine the doctor and also cross-examine the doctor who has given fitness certificate to the victim at the time of recording dying declaration. All the appellants - accused to appear before the trial court on 10.1.2007. Those who are on bail, their bail bond to continue before the trial court also, those who are in custody shall be produced from the jail before the trial court on that day. The trial court shall record the evidence on the line of the guide-lines given above and decide the matter afresh. Zerox copies of the medical case-papers was given to the Advocates for the Accused in court, today. It is clarified that if relating to these issues, the accused express their desire to cross-examine any of the witnesses already examined or to be examined, the trial court will give them full opportunity in that regard. With the above

directions all the Appeals are disposed of along with pending civil applications, if any.

5. This new trial is to be concluded and judgment to be delivered afresh within four months of first appearance given above.

**(D.G. DESHPANDE, J.)**

**(Smt. R.S. DALVI, J.)**